

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1041 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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UNION OF INDIA

Versus

N N CHOKSHI

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Appearance:

MR RM VIN for Petitioner

MR RP BHATT for Respondent No. 1

REFUSED for Respondent No. 3

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/05/96

ORAL JUDGEMENT

This Appeal arises from the Judgment and Decree dated 1st February 1979 rendered by the learned Civil Judge (S.D.), Mehsana, in Special Civil Suit No.4 of 1977. The learned trial Judge decreed the plaintiff's Suit for Rs.15,860/- with interest at the rate of 6 per

cent from the date of the Suit till date of the payment and cost of the Suit. The claim in the Suit would read as under :

Rs.13,000/- Loss on account of non-delivery of six  
fresh buffalos vide Railway Receipt  
No.155282 dated 14.8.1975, Invoice No.16.

Rs. 2,860/- Interest as per the custom prevailing in  
buffalo market due to the non-delivery of  
the Suit goods from 16.8.1975;

Rs. 50/- Notice charges.

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Rs.15,910/- Total claim

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2. The appellant herein is the original defendant No.1 - Union of India representing the Western Railway, Respondent No.1 is the original plaintiff in whose favour the decree has been passed and the respondents No.2 & 3 are the original defendants No.2 & 3 being two brothers. The parties are referred to in this judgment as per their original nomenclature, viz. plaintiff and the defendants or defendant No.1, defendant No.2 and defendant No.3.

3. The defendant No.2 booked six fresh buffaloes to Jogeshwari Railway Station, Bombay from Dangarva Railway Station, as per the Railway Receipt No.155282 on 14.8.1975 under Invoice No.16, for the same being transported in Wagon No. BR-612831. The Railway Receipt was in the name of defendant No.2 being both consignor and the consignee. He, however, sold the said buffaloes and accordingly transferred and endorsed the railway receipt on 16.8.1975 in favour of the plaintiff for the consideration of Rs.13,000/-. On the same day he drew the Hundi (Bill of Exchange) for the sum of Rs.13,000/in favour of the plaintiff. The plaintiff sent the railway receipt along with the Hundi for Rs.13,000/- for the same being presented through Shroff Harishchandra Hiralal Shah and the defendant No.2 was to honour the documents by seeing that goods were delivered by the railway administration to the agent of the plaintiff. However, defendant No.1 Railway Administration Officers subordinates had delivered the goods to defendant No.3 without collecting the original railway receipt and without ascertaining the true ownership regarding the goods - the buffaloes covered by the said railway receipt. The defendant No.3 having no right title or interest towards the goods had accordingly taken the

delivery of the goods in question. It is the case of the plaintiff that the defendant accordingly joined hands and in collusion, caused loss to the plaintiff on account of non-delivery of the goods in question on the presentation of railway receipt for which the facts are set out in the plaint. The plaintiff, therefore, sued the defendants holding them jointly and severally liable for the loss as per the particulars set out hereinabove.

4. The defendants No.2 & 3 remained absent in the proceedings before the learned trial Judge and the suit proceeded ex-parte against them.

5. The defendant No.1 railway Administration, however, resisted the claim in the suit by filing written statement Ex.18 dated 21.7.1977. While denying the allegations contained in the plaint the first defendant asserted that the consignment covered by the railway receipt in question was correctly delivered to the concerned defendant; that the plaintiff should prove the sale of suit consignment for the consideration of Rs.13,000/- as alleged in the plaint; that on defendant No.3 executing the indemnity Bond to railway on his say that the railway receipt was lost, the consignment of the live stock was delivered as per the usual practice; that the negligence or misconduct on the part of concerned employees of the railway administration was not there in delivering the consignment in question to defendant No.3; that the value declared for each buffalo was Rs.200/- as per the forwarding note; that the consignment was not insured, with the result that there was the note "not insured L & U (Loading & Unloading) by owner one attendant allowed free-booked under Permit No.18895 of 6.8.1975"; that the plaintiff would not be entitled to claim excess value of buffalo under Section 77(A) of the Indian Railway Act (hereinafter referred to as "The Act"); that the claim having been preferred beyond six months as required under Section 78(B) of the Act would be barred by time; that the statutory notice under Section 80 C.P.C. was not legal and valid and that the plaintiff must prove the suit claim.

6. Following issues were framed by the learned trial Judge :

1. Whether the plaintiff firm is registered u/s.69 of the Partnership Act ? If no, is the Suit maintainable?
2. Whether the plaintiff proves that D/2 booked six buffalos from Dangarva Rly. Station to Jogeshwari

Rly. Station (Bombay) vide R/R No.155282 on 14.8.1975, invoice No.being 16 and wagon No.BR-612831 ?

3. Whether plaintiff proves that deft.No.2 had sold, transferred & endorsed the buffaloes along with the said R/R on 16.8.75 to the plaintiff for Rs.13,000/- and had endorsed the original R/R ?
4. Whether plaintiff proves that on the same day deft.No.2 passed a Hundi to the same effect and it became the owner of the goods and R/R was delivered to it ?
5. Whether plaintiff proves that the subordinates of D/1 delivered the goods to D/3 without collecting original R/R and without ascertaining the true ownership of the goods ?
6. Whether plaintiff proves that subordinates of D/1 acted negligently and carelessly as alleged in Para - 3 of the plaint ?
7. Whether plaintiff proves that defts.No.2 & 3 had joined hands and colluded with the subordinates of D/1 ?
8. Whether plaintiff proves that he has suffered of Rs.13,000/- on account of non-delivery of six buffalos vide R/R No.155282 dtd.14.8.75 ?
8. Whether plaintiff proves that he has suffered of Rs.13,000/- on account of non-delivery of six buffalos vide R/R No. 155282 dtd.14.8.75 ?
9. Whether plaintiff proves that he is entitled to recover Rs.13,000/- ?
10. Whether defendant No.1 proved that the deft.No.3 has rightly taken delivery of goods at Jogeshwari at the instance of D/2 ?
11. Whether defendant No.1 proves that it has rightly delivered the buffalos to D/3 on his executing the indemnity-bond as contended in para - 4 of the w.s. ?
12. Whether defendant No.1 proves that value of each buffalo was Rs.200/- and that plaintiff is not entitled to excess value under Section 77A of the Indian Railway Act as contended in para - 7 of

the W.S. ?

13. Whether defendant No.1 proves that because plaintiff has not preferred the claim within six months under section 78(B) of Indian Rly. Act that the suit is barred by limitation ?
14. Whether the suit notice under section 80 of the Code of Civil Procedure is legal and valid ?
15. Whether this court has jurisdiction to try this suit ?
16. To what reliefs, if any, is plaintiff entitled to?
17. What order ?

7. The learned trial Judge gave findings on Issues No.1 to 9 in the affirmative; Issue No.10 to 13 in the negative; Issue No.14 & 15 in the affirmative and Issue Nos.16 & 17 as per the order, the substance whereof has been stated hereinabove.

8. The learned trial Judge has set out synopsis of evidence in following manner :

Plaintiff's Oral Evidence :

Ex.28 - plaintiff's evidence

Documentary Evidence

1. Exh.29 R/R dtd.14.8.75
2. Exh.30 Hundi dated 16.8.75;
3. Exh.31,32 and 33 extracts from the account-books,
4. Exh.34, suit notice dated 17.8.76 u/s.78B and 80 C.P.C.,
5. Exh.35 & 36 postal AD Receipts,
6. Exh.39, copy of letter dtd.2/12/75 addressed to Manager, Jogeshwari Goods Office;

7. Ex.40 postal, AD Receipt of Exh.39,  
dtd.5.12.75

DEFENDANT'S ORAL EVIDENCE :

Ex. 43 ASM

DOCUMENTARY EVIDENCE :

1. Exh.44 forwarding Note dtd.6.8.75;

2. Exh.46 Indemnity-bond dated 20.8.75

9. Upon appreciation of the evidence the learned trial Judge decreed the plaintiff's suit as above.

10. Being aggrieved with and dissatisfied by the said decision of the learned trial Judge the appellant has filed this Appeal against the same as stated above.

11. I have heard the learned Counsel appearing for the defendant No.1 - appellant Railway Administration and the learned Counsel appearing for the plaintiff.

12. The only questions which have been raised before this Court are (1) Whether the plaintiff has right to file Suit; (2) Whether the plaintiff has served legal and valid notice under Section 78(B) of the Indian Railways Act in time; (3) Whether the plaintiff has succeeded in proving the price of the goods/the value of the goods covered by the railway receipt in question, and (4) Whether the plaintiff has succeeded in proving the claim of Interest ? My answer to these questions are against the appellant - defendant No.1, except the question of interest in respect of which my answer would be in favour of the Railway Administration.

13. Question No.1 :

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I have gone through the evidence read by Mr.Vin, learned Counsel for the appellant. The plaintiff has produced documentary evidence in the form of Hundi Ex.30 dated 14.8.1975 (Bill of exchange), Railway Receipt containing the endorsement in favour of the plaintiff Ex.29 dated 14.8.1975, Ex.31, 32 and 33 - extracts of books of accounts proved by the plaintiff and the notice correspondence referred to in the synopsis of the plaintiff's evidence. On going through these evidences I am of the opinion that the plaintiff has clearly proved

by cogent evidence the plaintiff's case that the plaintiff had purchased the buffaloes in question covered by the aforesaid railway receipt. It is for this reason that there was no specific plea and issue with regard to whether the plaintiff has right to file Suit or not. It is a different question as to whether the plaintiff had succeeded in proving the consideration for the purchase of the buffaloes in question and what would be the effect of statement of the value of the buffaloes in the forwarding note on the consideration, if established. The fact remains that the evidence is so unimpeachable that it can hardly be found that the plaintiff did not establish its case for having right to sue the defendant. The answer to the first question, therefore, shall be in affirmative and to the effect that the plaintiff had succeeded in establishing its rights to file the Suit. The indirect discussion with regard to the delivery of the goods can be found at Page : 18, 19, 20, 21, 22 and 23 of the Judgment of the learned trial Judge. Nothing more needs be added in so far as the first question is concerned.

14. In view of the aforesaid evidence the decisions in the case of Shamji Bhanji & Co. V/s. North-west Rly.Co. reported in A.I.R. 1947 Bombay 169 and Union of India v/s. West Punjab Factories, reported in A.I.R. 1966 SC 395 where it has been ruled that mere endorsement in favour of a third party would not result in passing of title to the goods covered by the railway receipt in favour of the third party would not be applicable. Whether the title to the goods covered by the Railway Receipt has passed in favour of a consignee or the third party would have to be decided on evidence and the evidence as stated above clearly indicates that title to the goods in question had passed in favour of the plaintiff. In Ibrahim Isaphai v/s. Union of India, reported in A.I.R. 1966 Gujarat 6, the Bombay decision in Shamji Bhanji and company has been explained. This court has said that if the endorsee has acquired ownership in the goods he would be entitled to sue the railway.

15. As before the learned trial Judge it has also been contended that because the plaintiff has not preferred the claim within six months as required under Section 78(B) of the Indian Railways Act the Suit is barred by time. In this connection relevant dates might be noted. The Suit consignment was booked on 4.8.1975; the date of the receipt is 20.8.1975; the date of the combined notice under Section 78(B) of the Act as well as Section 80 of the C.P.C. (Ex.34) is 17.8.1976 meaning

thereby that such notice has been given after about nearly a year of the date of receipt. It is, therefore, contended that the suit is barred under Section 78(B) of the Act. It is in this connection that the learned trial Judge has made reference to notice Ex.39 dated 2.12.1975 addressed by the plaintiff to the Railway Administration. In this notice the plaintiff set out the facts regarding purchase of the suit goods for Rs.13,000/- by the plaintiff from defendant No.2 and also making a grievance about the fact that the Railway Administration ought not to have delivered the said goods to defendant No.3. Plaintiff has also stated that the plaintiff would be constrained to move G.L.O. if the needful was not done in the matter. This notice is clearly within the period of six months as contemplated by the aforesaid provisions of the Act. The learned trial Judge has reproduced the provision contained in Section 140 of the Act. It has been reproduced at pages : 32 and 33 of the Judgment of the learned trial Judge. Dealing with this provision canvassed on behalf of the Railway Administration the learned trial Judge has said that all that the provision of Section 140 of the Act contemplates is that the notice should be addressed either to the Manager or to the Chief Commercial Superintendent. Admittedly Notice Ex.39 is addressed to the Manager, but the address given is not that of the concerned office. In this connection the learned trial Judge has observed that since the notice has been addressed to the Manager and simply because it was sent at Jogeshwari it cannot be said that the notice Ex.39 is defective under Section 140 of the Act. The learned trial Judge, after making reference to the decision reported in A.I.R. 1975 Gauhati at Page 74 where the notice was addressed to the Station Master, N.F.Rly., Dubri with a copy sent to the Chief Transportation Superintendent, observed that in the case before the learned trial Judge notice was in fact addressed to the Manager and not to the Station Master. The learned trial Judge then has proceeded to consider the decision of the Apex Court in the case of Governor General in Council V/s. Musaddi Lal, reported in A.I.R. 1961 SC 725 and in the case of Boota Mal V/s. Union of India, reported in AIR 1962 SC 1879. The observations of the Apex Court in the later decision to the effect that in enacting Section 77 of the Act the intention of the Legislature must have been to afford only a protection to the railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claim for compensation for the loss or damage caused to their consignments during the course of transit on the railways and that notice under Section 77 should be liberally construed, have been relied upon.



16. The result is that the plaintiff has clearly established having served a notice under Section 78-B of the Act well in time. In that view of the matter the contention of the learned Counsel for the Railway that the plaintiff's Suit is not well within the time pursuant to Section 78(B) read with Section 77 of the Act cannot be accepted.

17. QUESTION NO.3 :

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From the evidence of the plaintiff's witness it can be gathered that on 14.8.1975 the defendant No.2 had booked six buffalos under the Railway Receipt in question as stated above and on 16.8.1975 the defendant sold the buffalos to the plaintiff for Rs.13,000/- and executed Hundi in favour of the plaintiff while making an endorsement at the back of Ex.29 Railway Receipt. In view of these documents and the extracts from the plaintiff's Account Books Ex.31, 32 and 33 it is clear that the plaintiff has proved passing of consideration of Rs.13,000/- in favour of defendant No.2. The said documents of title to goods were sent to Shroff Harishchandra Hiralal and if the defendant No.2 wanted to repurchase the buffaloes in question then he had to pay Rs.13,000/- to said Shroff and collect the original Railway Receipt by retiring the Hundi in question. Instead the defendant No.3 had taken away the buffaloes in question on 28.8.1975, inspite of the fact that on 18.8.1975 the goods clerk at Jogeshwari, Bombay was informed that without the original Railway Receipt and in absence of the concerned person of the plaintiff the buffaloes in question should not be delivered to anybody. As against this clear evidence adduced on behalf of the plaintiff the defendant tried to get out of the claim of the plaintiff by contending that the value of the buffaloes was stated to be Rs.200/- per buffalo in the relevant document and defendant No.3 had taken the delivery of the buffaloes by executing an Indemnity Bond. Rule 149 of Goods Tariff was relied upon on behalf of the appellant. The same has been quoted at Pages : 16 & 17 of the Judgment of the trial Court. Out of eight paras of the Rule, Para : 7 would assume importance. The same would read as under :

"In the case of goods sent value payable or goods consigned by the sender to "Self" when the R/R's have been lost, delivery may be granted only when the person claiming the consignment produces a stamped Indemnity Note, signed by the sender and

countersigned by the Station Master of the forwarding station. The name stamp of the forwarding station must be impressed on the note immediately below the signature of the Station Master. This note must be endorsed by the sender in favour of the person to whom the consignment is to be delivered."

The learned trial Judge has referred the above sub-rule No.7 and has observed that when the consignor and consignee is the same person the delivery may be granted when the person claiming consignment produces indemnity signed by the consignor and counter-signed by the Station Master of the forwarding station. It is clear from the evidence and the discussion of the evidence by the learned trial Judge that the procedure as set out in aforesaid sub rule has been violated by the concerned officer/employees of the railway Administration. Referring to Section 157 of the Indian Contract Act the learned trial Judge has observed that bailee is liable for the loss arising out of his negligence. It is the misconduct of the type noted above which has resulted into the liability of the railway and it is the loss which the railway has to compensate. The compensation cannot be equated with the value stated in the relevant note. Besides, serious doubt is created with regard to the collusion of defendant No.2 & 3 and the concerned staff of the appellant about some conspiracy for causing loss, not only to the railway administration but also to a third party. On being inquired about the value of the buffaloes at the relevant point of time it was fairly submitted on behalf of the parties that a buffalo was a precious article even at the relevant point of time and could not be had for a sum of Rs.200/- per buffalo. In that view of the matter and particularly because the plaintiff has proved the consideration of Rs.13,000/- it has to be found as a matter of fact that the price of the goods sold by defendant No.2 to the plaintiff is clearly established at Rs.13,000/-.

18. QUESTION NO. 4 :

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I have gone through the evidence on the record of the case. I have heard Mr.Bhatt, learned Counsel appearing for respondent No.1 (Plaintiff). He has not been able to show any evidence worth the name with regard to custom of the trade or custom of the buffalo market for charging the interest at the rate of 16-1/2 per cent.

All through-out from the notice correspondence upto the fag end of the evidence the claim of interest is based only on custom of trade. In the absence of any evidence worth the name on custom the interest claimed in this Suit would not have been allowed. The learned trial Judge has not assigned any reason for allowing the interest and in that view of the matter the question No.4 will stand answered against the plaintiff.

19. In the result the appellant - defendant No.1 partly succeed to the aforesaid extent that is to say, to the extent of claim of interest. The Decree passed by the learned trial Judge shall stand modified as under :

The defendants shall pay to the plaintiff a sum of Rs.13,000/- with interest at the rate of 6 per cent per annum from the date of the Suit till payment and cost of the Suit on the claim allowed. There shall be no order as to cost in respect of the claim which has not been allowed. The appeal is partly allowed accordingly with no order as to costs.

If the defendant No.1 (appellant herein) has deposited the amount as per the order dated 10.8.1979 passed by this Court while admitting the appeal and if the plaintiff has withdrawn the said amount by furnishing surety, necessary recovery shall be effected in terms of the modified decree. This Appeal and the Civil Application No. 2230 of 1979 would accordingly stand disposed of.

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